HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.28188 of 1998

Dated 21st Day of March, 2007

Between:

Satish R. Naik
and seven others ..
Petitioners

And

The Government of A.P.
rep. by its Principal Secretary, Revenue Dept.
Govt. of A.P. Secretariat Buildings,
Hyderabad
and another ..
Respondents

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O R D E R:

This writ petition is filed to quash the Memo No.62539/UC.II(2)/94-4, dated 27.8.1998 issued by the 1st respondent. The brief facts of the case are that the petitioners have joint family properties bearing premises Nos.1-9-698 and 1-9-1087 covered in an area of 15,391.43 square metres situated at Bagh Amberpet, Hyderabad. They filed application under Section 6(1) of the Urban Land Ceiling Act for declaration of their premises along with agricultural land in S.Nos.273 to 275 and part of 277 situated at Jeedimetla village in peripheral area of Hyderabad Urban agglomeration. The building premises consists of dwelling units in an area of 15,391.51 square metres The 2nd respondent, in his Proceedings dated 19.8.1994, passed a final order declaring that the land in question is below the prescribed limit of general automatic exemption as provided in G.O.Ms.No.733 and excluded it from the purview of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"). Now, the petitioners' grievance is that the 2nd respondent-Special Officer and Competent Authority passed the final order dated 19.8.1994 without giving additional appurtenant land to the four dwelling units which have to be necessarily protected as per the statutory provision under Section 2g(ii) of the Act and erroneously observed that an extent of 208.43 square metres is excess to the holding of each petitioner contrary to the provisions of the Act.

Consequently, the 1st respondent-Government, instead of exempting the marginal extent of 208.43 square metres to each of the petitioner, which works out to 1667.44 square metres covered by road, passed the Memo dated 27.8.1998 rejecting the petitioners' request for exemption of marginal extent of 1667.44 square metres and directed the 2nd respondent to take over the possession of surplus land.

Heard the learned counsel for both the parties.

Apparently, the 2nd respondent-Special Officer and Competent Authority issued Proceedings dated 21.11.1994, wherein he explained the circumstances and recommended that the exemption sought for the determined surplus land can be considered as long as the same is put to use as an approach road. In spite of this fact, the 1st respondent, without considering the recommendation, passed the impugned order in a cryptic manner. This shows that the he has not applied his mind in passing the order. When once there is a recommendation, of course, it may be not be accepted, but the authority concerned must assign cogent reasons as to why he is not accepting the recommendation. The learned counsel for the petitioners has also drawn my attention to the judgment of the Supreme Court in **State of Maharashtra & Anr. Vs. B.E. Billimoria & Others**[1] wherein it is described as to what the nature of vacant land is and the same can be brought to the notice of the 1st respondent during the course of hearing the matter.

Having regard to the facts and circumstances of the case, this Court is of the view that the Memo, dated 27.8.1998 impugned in this writ petition is liable set aside.

In the result, the writ petition is allowed and the Memo dated 27.8.1998 issued by the 1st respondent is set aside. However, the 1st respondent is directed to take into consideration the recommendation

made by the 2nd respondent on 21.11.1994 and pass a reasoned order as to whether the petitioners are entitled to exemption or not. No costs.

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21.03.2007

bcj

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[1] 2003(5) Supreme 580